MUNICIPAL CORPORATIONS — LEGISLATIVE CONTROL — PROVISION FOR ENACTMENT OF ORDINANCES. — A city charter provided that all ordinances must be read three times to the board of aldermen before final passage. An ordinance was twice read before the board as constituted, but the final reading took place before a board organized after election, one half of its members being newly elected. *Held*, that the ordinance is invalid. *Paterson, etc., R. R. Co.* v. *Mayor, etc., of Paterson*, 68 Atl. 76 (N. J.).

Statutes very generally provide that an ordinance shall be read three times before final enactment. By the better opinion such restriction in the city charter is mandatory, not directory, and unless it is waived in some manner provided by the charter, an ordinance passed without the required readings is invalid. *Swindell* v. *State*, 143 Ind. 153. The cases opposed consider the requirement a parliamentary rule open to modification or waiver by the council. *Aurora Water Co.* v. *City of Aurora*, 129 Mo. 540. The legislative intent inferable from this requirement is obviously that the readings shall take place before a council with membership unchanged by a general election. Analogy to other legislative bodies and the apparent purpose to prevent ill-considered legislation lead to this conclusion. It is true that for certain administrative purposes and in its general business the demand is clearly for a continuity of action unbroken by election and change of membership. *Booth* v. *Bayonne*, 56 N. J. L. 268. But for strictly legislative purposes the continuity of such a body is broken by a general election. Thus, the present decision seems sound on principle, though the other authorities found on this point give the opposite construction to the requirement. *Smith* v. *Columbus, etc., Ry.*, 8 Oh. N. P. 1; *McGraw* v. *Whitson*, 69 Ia. 348.

POLICE POWER — REGULATION OF PROPERTY AND USE THEREOF — SLEEPING-CAR BERTHS. — A statute provided that the upper berth when unoccupied should be closed if the occupant of the lower berth so requested. *Held*, that the statute is unconstitutional. *State* v. *Redmon*, 114 N. W. 137 (Wis.).

Unless a valid exercise of the police power, the statute in question seems an unconstitutional regulation of the use of property. The legislature is ordinarily the proper judge of the necessity for health or other police regulation, and only when there exists no possible justification for a legislative act can the courts declare it unconstitutional. *People* v. *Smith*, 108 Mich. 527. But a statute showing on its face that it has no reasonable connection with the permissible objects of protection under the police power is unconstitutional, although purporting to be based on that power. Acts which it is sought to justify thereunder must be beneficial to the public generally, and the means must be reasonably necessary for the accomplishment of the purpose. *Lawton* v. *Steele*, 152 U. S. 133. A statute allowing only one berth in a section might well be upheld, but the protection of the health of the community is clearly not the purpose of legislation affording the lower berth better ventilation only upon the double contingency of the upper berth being unsold and the occupant of the lower requesting that it be closed. *Cf. Chicago* v. *Netcher*, 183 Ill. 104.

SPECIFIC PERFORMANCE — DEFENSES — PENDING ACTION OF EJECTMENT. — A agreed to sell land to B, and B paid part of the purchase price. Before conveyance C brought ejectment against A. Then B filed a bill for specific performance. The court below decreed that A, if successful in the ejectment suit, should convey the land to B on payment of the balance of the purchase price within twenty days after termination of that suit. *Held*, that the decree is improper. *Rosenberg* v. *Haggerty*, 189 N. Y. 481.

The discretionary power of a court to grant or refuse specific performance of a contract must be exercised not arbitrarily or capriciously, but reasonably with a view to justice under the circumstances of the particular case. *Quinn* v. *Roath*, 37 Conn. 16. Since the court assumes that time is not of the essence of this contract, if a bill were brought after the termination of the ejectment suit, the court might grant specific performance, though several

years had elapsed. *Gunton* v. *Carroll*, 101 U. S. 426. Such a decree would be justifiable because the court would have before it all the facts which might render performance equitable or inequitable. In the present case, however, the court by its decree has bound both parties to carry out the contract at some indefinite future time. See LANGDELL, BRIEF SUR. EQ. JURISD., 46. Pending that time circumstances may intervene which would render performance an injustice to one or to both parties. See *Gotthelf* v. *Stranahan*, 138 N. Y. 345. From the nature of the case the court could not have these circumstances in mind. Consequently the principal case seems right in holding that the court cannot "suspend" a decree of specific performance over the parties.

TAXATION — PROPERTY SUBJECT TO TAXATION — PROCEEDS OF FEDERAL SALARY. — The defendant taxed the plaintiff's bank deposit, which consisted only of money received by the plaintiff as his salary as an officer in the United States Navy. *Held*, that the tax is constitutional. *Dyer* v. *City of Melrose*, 83 N. E. 6 (Mass.).

A state cannot impose an income tax on the interest on federal bonds. *Weston* v. *Charleston*, 2 Pet. (U. S.) 449. But it can tax as personal property checks drawn on a sub-treasury for the payment of interest on the same bonds. *Savings Society* v. *San Francisco*, 200 U. S. 310. It cannot tax land owned by the federal government, though not used for any public purpose. *Van Brocklin* v. *Tennessee*, 117 U. S. 151. But as soon as an individual has taken the necessary steps to acquire the land, he may be taxed thereon, though, until the patent is issued, the legal title remains in the United States. *Witherspoon* v. *Duncan*, 4 Wall. (U. S.) 210. The test given is whether the state taxation impairs the efficiency of a federal agency in performing its functions. See *Railroad Co.* v. *Peniston*, 18 Wall. (U. S.) 5. Applying this test, the decision in the present case seems correct. The state could not, it is true, have taxed the salary of the plaintiff as income. *Dobbins* v. *Commissioners of Erie County*, 16 Pet. (U. S.) 435. But a tax on the money after it has been paid to him in no sense lessens the remuneration of a federal agent. The money has lost all federal nature, and has become indistinguishable from any other personal property taxable by the state.

TAXATION — PROPERTY SUBJECT TO TAXATION — STATE TAX ON PROCEEDS OF SALE OF IMPORTS. — A foreign corporation was engaged in New York in the business of importing and selling goods in the original package. The proceeds of the sales, when in the form of cash, were temporarily deposited in New York banks, and when in the form of bills were held in New York for collection. The balance of the proceeds, after paying the customs duties on imports and other business expenses, were immediately remitted abroad. A tax was levied by the state on the cash on hand and in bank and on bills receivable, as capital employed by the corporation in business within the state. *Held*, that the tax was not invalid as a regulation of foreign commerce. *People* v. *Wells*, U. S. Sup. Ct., Jan. 6, 1908. See NOTES, p. 353.

TRADE-MARKS AND TRADE-NAMES — PROTECTION APART FROM STATUTE — SITUS OF PROPERTY RIGHT. — The plaintiffs had manufactured a liqueur which they sold under the trade-name "Chartreuse." This product was made in France, but was sold extensively in this country. The French government confiscated the property, and this trade-name was transferred to the defendant. The plaintiffs removed to another country and, continuing the sale of their goods in this country, marked as before, sought to restrain the defendants from selling their product in this country under the same name. *Held*, that the defendant be enjoined. *Baglin* v. *Cusenier Co.*, 156 Fed. 1016 (Circ. Ct., N. D. N. Y.). See NOTES, p. 361.